P 34F

K. Examiner

File No. S. Bel. 15/s

Legal department

A **BRANCH**

Subject:— Belgaum suit

Civil suit no. 133 of 1949

Ganpat Gundo Desai — Plff

Vs.

The state of Bombay — Defts.

For recovery of a sum of Rs. 60,872-8-0 and 62 Tons of teak wood or in the alternative Rs. 1,02,429-0-0 pen dem.

S. Bel. 15/50

File No.

S. Bel. 15/s

C O N T E N T S.

Legal Department File No. S. Bel: 15/50.

Sr.No.	R.I./O.No.	Subject	Pages.
		Suits Belgaum. C.S.No. 133 of 1949. G. G. Desai ...Plff. V/S. The State of Bombay. ...Deft. For recovery of a sum of Rs. 60,872-8-0 and 42 tons of teak wood or in the alternative Rs. 1,02,427-0-0 from Govt.	1-44.

R.O.S.No. ----------
1948.

In the Court of the Civil Judge, Senior Division,

B e l g a u m.

(1) Ganapat Gundo Desai, age about 46, Caste Maratha, Occupation contractor, residing at Belgaum. } PLFF.

VERSUS.

(1) The Province of Bombay. } DEFT.

Value for Court fees and jurisdiction
Rs. 102,427/-

In this the plff above-named begs to state as follows:-

1) The plff is a timber merchant and building contractor, carrying on that business at Belgaum and other neighbouring places. He undertakes the construction and repairing of Government buildings and also the making and supply of furniture and building materials to Government Officers and Public Institutions. With a view to carry out these works Government undertake to supply and the plff used to be supplied with the necessary timber and other materials by Government at Scheduled rates fixed by them.

2) In March 1944, the Executive Engineer, Dharwar Division, Dharwar, had issued a notification inviting tenders for providing furniture for the new Chemistry Laboratory Building of the Karnatak College, Dharwar. The plff had sent his tender for Rs. 16,411/- and it was accepted by the said officer on 21-5-1944. According to the terms of the notification the work was to be completed within three months of the supply of seasoned teak wood to plff by Government at scheduled rates. The plff waited for

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the supply of teak-wood, and inspite of repeated demands and frequent visits to Dharwar and Dandeli, for that purpose, teak-wood was not supplied to him at all. The Depot Officer Dandeli informed the plff in October 1944 that seasoned teak wood was not then available. Then the Executive Engineer, -- inquired with the Conservator of Forests, if teak wood could be seasoned and supplied but he was informed that it could not be done. The plff then suggested that he might be permitted to use teak wood from his own stock and that he should there--after be supplied at scheduled rates, as soon as possible, -- with the actual quantity of teak wood utilized by him for -- preparing the furniture, Government accepted this offer and -- permitted plff to make the furniture out of the teak wood in his stock.

3) But by the time the afore-mentioned agreement was reached, the prices of the requisite timber and all materials required for making the furniture, and the wages of carpenters and other workmen had enormously increased. The plff had there--fore already demanded enhanced rates, as the teak wood was not supplied by Government in time. The then Superintending Engineer promised orally that plff would be given enhanced rates and told the plff to commence the work without waiting for a written order to that effect as there would be delay in getting sanction for the same through proper channel. The plff was called by the Superintending Engineer to his office and was told that if the application for revised rates was then forwarded, he and his -- office would be blamed by the Accountant General for inviting and accepting tenders, when seasoned teak wood was not in their possession. He orally promised to grant enhanced rates and -- requested the plff to sign a formal application saying that -- plff should supply the furniture at the tendered rates and would not raise the question of enhanced rates. The plff was assured -- that the said application would not come in his way of claiming enhanced rates, after the work was finished. That application

was drafted by the Superintending Engineer and typed in his office. Plff however suggested some modifications in that application, but he was threatened that if he did not sign the application as it was, the amount of the Bill of the P.W.D. work going on at Kolvi, due to plff, would be withheld or reduced to compensate for any loss that might occur, if this furniture work was got completed by any -- other contractor. The plff being thus placed in a helpless position, could not afford to go against and displease the said officer. He had therefore no other alternative but to sign the said application dated 30/12/1944 and rely on his oral promise and assurance to grant enhanced rates, -- inspite of the undertaking in the said application.

4) The plff then prepared within the stipulated period the furniture with his own teak wood and took it to Dharwar as per -- instructions of the Engineer. But as the laboratory -- building was not ready then, the furniture had to be stack--ed in the College building as advised. The furniture was given into the possession of the P.W.D. Officer in charge and a receipt was obtained. The Laboratory building was not ready even by the time when the College re-opened in June 1945 after the summer vacation was over. So the -- furniture had to be removed to the P.W.D.Store Room as -- instructed by the Engineer and some of the furniture was damaged during transit. The plff repaired the damage so caused at his own cost.

5) Later on the plff was informed by the Engineer, Dharwar, that he should arrange to fix the furniture in the Laboratory building. The plff then sent his carpenters and other workmen to Dharwar for that work. But they had to remain idle for more than six weeks as the furniture was not brought back to the College premises, from the -- P.W.D.Store Room by that Department as it was their duty

to to do so. The plff had therefore to bear loss of Rs. 80/- per day, as he had to pay the wages of his workmen, though they did no work during that period. The plff had then -- complained about this to the Engineer.

6) After the furniture was fixed in the building, some of its parts such as locks, bolts, planks etc. were found -- missing and the plff had to replace them at his own cost, as the Department alleged that these were not originally fixed at all by the plff. Though the plff had proved to the satisfaction of the Assistant Engineer, that the plff was not at fault in this respect, the additional cost which the plff had to bear on that account was not sanctioned in the final bill.

7) The glass panes were not available in the market, after glass work had still remained to be done after the furniture was fixed in the Laboratory building. When the glass panes had -- arrived, the plff had sent his workmen to fix them; but they were sent back by the Assistant Engineer, who said that he -- would get them fixed departmentally at the rate at which plff would do it. But when the final bill was prepared, plff found to his surprise, that higher rates were charged for fixing the -- glass panes and only a part of the expenses incurred by the plff for bringing the furniture from the P.W.D.Store Room to the -- College premises, was allowed. Certain other reductions also were made in the bill without any justification. Plff therefore -- refused to sign and accept the bill. But he was persuaded by the Superintending Engineer to sign it by giving an oral assurance - that he would see that plff would not be put to loss. Relying on that assurance which was given by a responsible officer, plff -- accepted the reduced bill.

8) The plff then renewed his prayer for enhanced rates on the grounds mentioned above by making an application to the -- Superintending Engineer, S.C. Belgaum; but it was rejected by -

that

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that Officer on 29/11/1947 on the ground that the plff had given an undertaking in the application dated 30/12/1944 that he would not claim enhanced rates. Then the plff appealed to the Government of Bombay on 13/12/1947 but the appeal was dismissed on 16/7/1948. The plff has not as yet been supplied with 42 tons of teak wood, which was sanctioned in his favour as he had used his own teak wood for preparing the furniture as stated in paras 3 and 4 above. According to the terms of the agreement, plff has been given the right to select the teak wood logs of the required sizes at Dandeli in company with the representative of the Sub-Divisional Officer, Dharwar. But the plff has not been as yet given the opportunity to -- select the logs and the matter is being unnecessarily post--poned on some ground or the other. The plff has therefore filed this suit for recovery of enhanced rate of Rs. 250 % over and above the tender amount and also for recovery of 42 tons of teak wood logs according to plff's selection or -- damages for not supplying the same.

9) The so-called undertaking given by the plff in his application dated 30/12/1944, that he would not claim -- increased rates was not a voluntary act of the plff. The -- Superintending Engineer took undue advantage of his official and dominating position and exerted undue influence on the plff who had then to yield to whatever was dictated by the former. Moreover the said officer had represented to the plff that it was quite a formal matter which would not be used -- against the plff and that it would not come in his way when claiming increased rates. So the plff is not bound by that undertaking and he is entitled to claim enhanced rates which are always granted by Government, when it is just and -- equitable, to do so due to change of circumstances and -- unforeseen developments after the tender is accepted. Under similar circumstances Government have granted enhanced rates to contractors in cases of Channewadi, Nittur and Belgundi

Bandhara

Bandhara works. On account of the delay in on the part of Government in supplying seasoned teak wood and also on account of the subsequent events stated above, plff had to pay 250 % more than the tender amount for getting the work done and he has suffered loss to that extent. Even after the furniture was prepared, the plff had to incur additional expenses on account of the fact that the Laboratory building was not ready, for the furniture to be fixed in it and also on account of other circum--stances mentioned above. The plff is therefore entitled to -- claim enhanced rate of Rs. 250 % over and above the tender amount. The cause of action arose on 16/7/1948, when the prayer of the plff was rejected by the Government of Bombay.

10) This Court has jurisdiction to try this suit as the cause of action arose within the jurisdiction of this Court and the value of the suit is more than Rs. 5000/-.

11) The value of the suit for Court fees and jurisdiction is Rs. 102,427-8-0 as shown below :-

(i)	Rs. 41,027-8-0	250 % of the tender amount of Rs. 16,411/-.
--	" 11,200-0-0	Value of 42 tons of teak wood at scheduled rate viz. Rs. 266 2/3 per ton. (This is the valuation for recovery of teak wood).
	19,845-0-0	Interest at 9 % on the market value of 42 tons of teak wood in 1945 i.e. Rs. 63,000 (1500 x 42) from 1-4-1945 to 28-10-48. (The contract was to be completed on -- 31-3-1945).
	Rs. 72,072-8-0	

(ii) Value of the suit for the alternative relief is Rs. -- 102,427-8-0 as shown below :-

Rs. 41,027-8-0	250 % of the tender amount of Rs.16411-0-0
51,800-0-0	Damages for not supplying 42 tons of wood, it being the difference between the value at the current market rate (Rs. 1500 per ton) and the value at the scheduled rate (Rs. 266 2/3 per ton) (Rs.63000 - Rs 11200).
9,600-0-0	Refund of deposit with Government as advance of the value of 42 tons of teak wood.
Rs. 102,427-8-0	

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Court fee is to be paid on the latter amount.

12) Plff prays for a decree :-

(1) for recovery of Rs. 41,027-8-0 as enhanced rate over and above the tender rate and for recovery of 42 tons of teak wood as selected by the plff, on payment of its price at scheduled rates, deducting the sum of Rs 9600/- already deposited with Govt. and also for recovery of Rs. 19,845 as damages as shown in para 11 above; or in the alternative,

(2) for recovery of Rs. 102,427-8-0 as specifi-ed in para 11 above.

(3) for future interest on the amount awarded and costs of this suit.

(4) for any other relief which the Court may deem fit to grant.

Signed and dated 28/10/1948.

V.D. Kelkar
Pleader
C.D. Tumaska
Mark.

Belgaum C.S.No.133 of 1949.

This suit is filed by a Contractor from Belgaum. In 1944, he had taken the contract of supplying furniture to the Karnatak College Laboratory. The wood was to be supplied by the P.W.D. and was to be paid for by the contractor. The wood supplied by the P.W.D. was not acceptable to the contractor and he refused to accept it. The P.W.D. had, therefore, to consider the question of rescission of the contract. At this stage, the contractor approached the S.E. and requested permission to carry on the work with his own wood. He also expressly agreed not to charge extra rates. He was, therefore, permitted to execute the work with his own wood. The contract was accordingly completed and the furniture was supplied.

2. After completion of the work, the contractor applied for enhanced rates but his request was turned down by all the P.W.D. authorities including Govt. He has, therefore, filed the present suit for damages and his claims are fantastic.

3. The contractor has no claim in law. His present suit is defensible on merits as well as technical grounds of jurisdiction and limitation. Sanction may, therefore, be accorded to the defence of the suit on the lines of the appended brief. A W.S. is also put up.

^ See RLA's No. 5372-B/16.6.48 Rle O. Contract/48; slip D.

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AS The brief has been very carefully prepared by the Regr. & it may be approved & the defence sanctioned as proposed.

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ALR RE 28/8

x Secy PWD 28/8

x No. 12243 d 26/8/50

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In the Court of the Civil Judge, Senior Division, Belgaum.

Civil Suit No.133 of 1949.

..... Plaintiff.

Vs.

The State of Bombay. ... . Defendant.

The following is the written statement of the defendant abovenamed.

1. It is admitted that the plaintiff's tender for Rs.16,411 was accepted and that the work was to be completed within three months from the date of supply of teak wood but it is denied that the defendant failed to supply it. The plaintiff was asked ~~xx~~ several times to select teak wood from the Dandeli Depot but he failed to do so, on the alleged ground that the wood available was not seasoned and the logs were round. Plaintiff's grounds for delaying selection~~xxx~~ were untrue and without substance. The wood was seasoned and fit for the work but the plaintiff refused to accept it. The defendant will rely on the relevant correspondence when produced.

2. It is admitted that the plaintiff made an offer to utilize his teak wood and agreed to be supplied with teak wood from Government stock when available. It is also admitted that this offer which was expressly stated to be without change of rates was accepted. The plaintiff is bound by that offer and the defendant will ~~reply~~ rely on the relevant correspon-dence when produced.

3. All the allegations in paragraph 3 of the plaint are denied in toto. They are all false, frivolous and vexatious and without substance. It is denied that any promises or threats were given.

4. Allegations in paragraph 4 are not denied.

5. With reference to allegations in paragraph 5, it denied that the plaintiff's men remained idle on account of any inaction on the part of the Public Works Department

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or that the Public Works Department was responsible for any loss that might have been caused to plaintiff. It is also not admitted that any loss was caused to the plaintiff as alleged.

6. It is submitted with reference to pagagraph 6 of the plaint that it was the responsibility of the plaintiff to fix the furniture in the Laboratory and it was his duty to guard it till it was fixed and delivered. The defendant denies any responsibility or ~~liabili~~ liability for the loss, if any, suffered by the plaintiff.

7. Allegations in paragraph 7 of the plaint are not true and are hereby denied. The glass panes were fixed by the Public Works Department at the request of the plaintiff and actual charges incurred by the Department were debited to him. The final bill in this respect has been accepted by the plaintiff . It is, however, denied that the plaintiff was persuaded to accept it or any assurances were given by the Superintending Engineer.

8. Allegations in paragraph 9 of the plaint are not true. It is denied that the Superintending Engineer used any coercion or undue influence. It is also not ~~submitted~~ admitted that the application was not a voluntary act of the plaintiff.

9. It is denied that the plaintiff had to pay 250% over and above the tender or that he suffered any losses. Assuming, but not admitting, that he suffered a loss, this defendant is not responsible for it nor is this defendant liable to pay damages to the plaintiff in respect ef thereof. The rights of the plaintiff are concluded by the written contract. He is not entitled to higher rates.

10. This defendant has not refused release of teak wood to the plaintiff. The Forest Department has been asked to release the necessary quantity and it is for the plaintiff to make the selection of the logs. This Defendant was and is willing to carry out his part of the contract and ~~will only~~ will rely..

will rely on the relevant correspondence when produced.

11. Without prejudice to the above contentions, it is submitted that this Court has no jurisdiction . The contract was entered into and was to be performed at Dharwar and was to be paid for there. The cause of action has wholly arisen at Dharwar and the suit is not maintainable in this Court.

12. The suit is also barred under Article 115 of the Limitation Act.

13. It is, therefore, submitted that the plaintiff is not entitled to any relief and his suit should be dismissed with costs.

District Government Pleader, Belgaum

I, the District Government Pleader, Belgaum do hereby declare that what is stated in paragraphs 1 to 13 above is true according to the information received and believed to be true. This verification is made at on the day of 1950.

District Government Pleader, Belgaum.

Suits :

Belgaum.

For recovery of a sum of Rs. 60,872-8-0 and 42 tons of teak wood or in the alternative Rs. 1,02,427-0-0 from Government.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 13618.

Bombay Castle, 26th September 1950.

Letter from the Superintending Engineer, Southern Circle, Belgaum, No. G-66/1, dated 13th February 1950—Forwarding the papers in the suit noted in the margin; and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BELGAUM.

Civil Suit No. 133 of 1949.

Ganpat Gundo Desai ... ... Plaintiff;

versus

The State of Bombay ... ... Defendant.

Memorandum to the District Government Pleader, Belgaum, No. 12444, dated the 30th August 1950—Forwarding a copy of the brief with its accompaniments in advance.

AXB Leg H 110—1

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

Original } for P. M. LAD,
Secretary to Government.

G. R.,L. D., No. 13618, dated the 26th September 1950.

To

* The Public Works Department,
* The Superintending Engineer, Southern Circle, Belgaum.
The Executive Engineer, Dharwar Division, Dharwar.
* The District Government Pleader, Belgaum (with two copies of the brief).
The Chief Engineer, P W D
* With a copy of the brief.

No. of 1950.

Copy forwarded for information and guidance to

Issued
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Submitted after issue
File in S. Belgaum/58 (new)
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BELGAUM CIVIL SUIT No. 133 OF 1949.

Chronological State of Facts.

This suit is filed by Shri G. G. Desai of Belgaum against the State of Bombay for recovery of a sum of Rs. 60,872-8-0 and 42 tons of teak wood or in the alternative Rs. 1,02,427 from Government. The amount is claimed as damages for the loss sustained by the plaintiff in the contract entered into with Government in the year 1944.

2. In March 1944, tenders were invited by the Executive Engineer, Dharwar Division, Dharwar, for providing furniture to the New Chemistry Laboratory of the Karnatak College, Dharwar. In pursuance of this invitation, the plaintiff submitted his tender for Rs. 16,411 which being the lowest was accepted by the Executive Engineer on 13th June 1944. According to the terms of the contract the work was to be completed within three months from the date fixed in the written Order to commence work. This order was given by the Executive Engineer, Dharwar, in his letter No. A-31 (a) dated 21st May 1944 and the plaintiff was informed that period of contract was to count from the date of letter. According to the terms of the contract, Government was to supply teak wood logs to the plaintiff which he was to select from Dandeli Depot. He was accordingly asked in the letter aforesaid to submit a list of logs required by him.

P. 9 Case pp.

3. On 7th June 1944, the plaintiff applied to the Executive Engineer, Dharwar and requested him to count the period of completion of work not from the date of Executive Engineer's letter dated 21st May 1944 but from the date of supply of logs. By his letter No. A-31 (a) dated 29th June 1944 the Executive Engineer, Dharwar conceded this request.

P. 13 do.

4. The contractor, however, did not select the logs in time but went on delaying selection on one pretext or the other and on 9th October 1944, he informed the Executive Engineer as follows :—

P. 39 do

(i) that no teak wood logs were available from Dandeli Depot for the past 4 months and that the Forest Authorities there stated that fresh seasoned stock wood arrive there from January 1945 onwards.

(ii) that he would require 2200 to 2400 cubic ft. of wood as against 1400 cubic ft. released to him as there would be greater wastage.

(iii) that he would do the work with the wood available with him provided he was given 40 per cent. higher rates.

The plaintiff demanded 40 per cent. increase in rate on account of rising prices and also a

priority certificate for purchase of hardware etc. In a subsequent letter the plaintiff informed the Executive Engineer that round logs were not useful and that he needed square logs for the work.

5. On inquiry with the Divisional Forest Officer, it was found that the plaintiff's complaint that seasoned wood was not available was false and that there was sufficient seasoned wood ready for release. The plaintiff was therefore directed by the Executive Engineer, to visit the depot and select the wood. P. 51 Case papers. P. 75 do.

6. On 28th November 1944, the plaintiff selected 17 logs and informed the Executive Engineer that round logs available were not seasoned and as such were not useful. The plaintiff was thereupon informed that there were sufficiently seasoned logs at the Depot and that the Depot Officer was asked to despatch them. P. 99 do. P. 105 do.

7. On 17th December 1944, the contractor informed the Executive Engineer that the logs were not of the required size and that he was not inclined to start the work with them as he would be put to loss. P. 137 do.

8. On 15th December 1944, as the contractor was not inclined to start the work, the Executive Engineer, Dharwar, made a report to the Superintending Engineer, Belgaum suggesting, among other things, rescission of the contract if the contractor failed to start the work in right earnest by 23rd December 1944. P. 123 do.

9. On 30th December 1944, the contractor applied to the Superintending Engineer and requested that he should be allowed to prepare the furniture out of his seasoned wood as the wood supplied to him from the forest Depot was not well seasoned and of sufficiently large girth ; and that he should be permitted to select teak logs to the extent of 1400 cubic ft. from the Forest Department in lieu of his wood when supply was available. The Contractor also requested that he should be permitted to prepare the furniture at Belgaum and to assemble and fix, and polish it at Dharwar. The Contractor further agreed not to claim enhanced rates in spite of the above changes but requested that period of commencement should be counted from 1st January 1945. P. 155 do.

10. These conditions were accepted and the Contractor was asked to carry out the work. Accordingly he completed the manufacture of the furniture at Belgaum in March 1945 and conveyed it to Dharwar in April 1945. P. 163 do.

11. After completion of the work, the Contractor began to make requests for enhanced rates; and on 26th February 1946 he applied to the Superintending Engineer, Southern Circle, requesting enhanced rates on the following grounds :- P. 207 do.

(1) that he had to incur an expenditure of Rs. 1,000 on trips to Dharwar and Dandeli for arranging for supply of wood.

(2) that rates of timber were on the increase and he could have made a profit of Rs. 4,000 had he sold his wood.

(3) that he had to incur an expenditure of Rs. 2,000 on wages of carpenters etc. as the building was not ready in April.

(4) that his bill was kept pending.

P. 213 Case pp. 12. On 11th April 1946 the Superintending Engineer requested the contractor to submit definite claims and the Contractor, thereupon, submitted that he should be given 100 per cent. increase in the rates; but his request was turned down. The plaintiff later appealed to Government but his appeal was rejected.

P. 319 do. 13. Meanwhile on 28th December 1946, the plaintiff requested release of 2400 cubic ft. of log wood in lieu of his 1200 cubic feet utilized for

P. 335 do. the furniture. His request was considered and by his No. D. D. c dated 31st May 1947, the Superintending Engineer, Southern Circle, directed that a total quantity of 2100 cubic feet should be released to him.

P. 397 do. 14. On 14th March 1948, the contractor agreed to accept this quantity but requested that the quantity should be released before 31st March 1948 or an amount of Rs. 44,100 should be paid to him before that date.

P. 403 do. 15. On 15th April 1948, the Contractor informed the executive Engineer that as his request was not complied with in time, he was not prepared to accept the timber and accordingly demanded its price which he assessed at Rs. 52,650.

P. 405 do. 16. On 20th April 1948, the Contractor was informed that release orders were already issued and that he should contract the Forest Department to get the supply.

P. 411 do. 17. On 8th May 1948, the contractor informed the Executive Engineer that the timber was to be selected in company with the Sub-Divisional Officer, Dharwar and as this condition was not observed he was not prepared to accept it.

P. 425 do. 18. Meanwhile the Forest Department also requested the Public Works Department to state

P. 443 do. the specification of the logs which should be released to the plaintiff and as the plaintiff refused to submit specification, no release could be effected in his favour.

19. On 28th October 1948, the plaintiff gave a notice of suit under section 80 of the Civil Procedure Code and on 16th July 1949, he filed the present suit in the Court of the Civil Judge, Senior Division, Belgaum.

Grounds of Defence.

Jurisdiction.—The suit has been filed in the Court of the Civil Judge at Belgaum. It should be contended that the Court at Belgaum has no jurisdiction to try the suit as the cause of action, if any, has arisen wholly in Dharwar and not at Belgaum. The place of suing in this case is determined by Section 20 of the Civil Procedure Code and the Court at Belgaum will be competant to try the case if it can be shown that it falls under clause (c) thereof. Clauses (a) and (b) are clearly not applicable. In suits arising out of contract, the cause of action arises within the meaning of clause (c) of section 20 of Civil Procedure Code at any of the following places, namely:—

(1) the place where the contract was made,

(2) the place where the contract was to be performed or performance thereof completed.

(3) the place where in performance of the contract any money to which the suit relates was expressly or impliedly payable.

In the present case the contract was made at Dharwar, it was to be performed and completed at Dharwar and as the Office of the Executive Engineer, Dharwar Division, Dharwar, is situated at Dharwar presumably the payment was also to be made there. In view of all these facts it is clear that the Court at Belgaum can have no jurisdiction to try the suit and the Court at Dharwar will alone be competent to try it. The Court should, therefore, be asked to dismiss the suit with costs on the preliminary grounds of jurisdiction.

2. *Limitation.*—The suit is for damages for loss arising out of a contract. The plaintiff has alleged various failures on the part of Government such as failure to supply good seasoned wood in time etc. and he holds Government responsible for the loss on account of the breaches alleged. The suit in these circumstances, will be governed by article 115 of the Limitation Act. That article is a general and residuary article for suit for compensation on unregistered contracts and that article also applies when there is no other specific article applicable to the case. It should be contended that this suit clearly falls under that article as there is no other specific article applicable to it. The date of limitation under article 115 commences as shown in the third column of the Schedule. That column provides for three cases: firstly the general one, when the contract is broken, i.e. date of breach of the contract; secondly, in contracts where there can be successive breaches, the breach in respect of which the suit is instituted occurs; and thirdly, in cases of contracts where there can be a continuing breach, when it ceases. The breaches alleged by the plaintiff have taken place in 1944-45 and the contract has been completed by the end of January 1946. The period of limitation under Article 115 is three years from

the date mentioned in the third column. It is obvious, therefore, that the period of limitation came to an end in January 1949 and this suit which is filed in July 1949 is time barred.

3. *Merits.*—The plaintiff has claimed two alternative reliefs. He claims a sum of Rs. 41,027-8-0 as damages on account of the loss suffered by him due to higher prices of material and higher wages; and Rs. 19,845 as damages for failure to supply teak wood in time. He also claims recovery of 42 tons of teak wood on payment of its price at scheduled rates *minus* a sum of Rs. 9,600 which he alleges to have been deposited with Government. In the alternative, he claims Rs. 1,02,427-8-0 as shown below:—

(i) Rs. 41,027-8-0 250 per cent. of the tender amount of Rs. 16,411.

(ii) Rs. 51,800-0-0 Damages for not supplying teak wood.

(iii) Rs. 9,600-0-0 Refund of Deposit.

The plaintiff's claims are *prima facie* fantastic and without substance and should not be admitted. It should be denied that the plaintiff has suffered any loss in the transaction or that Government is responsible for making it good to him. The rights and duties of the two parties to a contract are governed by the terms embodied in the contract and those terms have to be respected at all times. Any gain or profit which results from the terms, is to be borne by the party on whom it falls and the other party cannot be called upon to share it. However the various contentions of the plaintiff are considered below.

4. The plaintiff alleges that the Public Works Department had agreed to supply timber but it failed to supply, that the plaintiff thereafter suggested that he should be allowed to use his own teak wood and that he should be supplied at scheduled rates, that by the time this arrangement was effected prices of timber and wages of carpenters had enormously increased and that he had demanded enhanced rates, that the Superintending Engineer orally promised him to give enhanced rates but made him sign a petition to the effect that he would not claim them, that the building was not complete when the furniture was ready and in the circumstances he had to suffer loss on account of wages etc. of his workmen who remained idle. The plaintiff alleges further market conditions had changed during the period and in the circumstances, he is entitled to claim enhanced rates. He also says that Government always grants such enhanced rates on account of changed circumstances etc. and he concludes that on account of delay on the part of Government in supplying seasoned wood and also on account of the subsequent events narrated him, he had to pay 250 per cent. more than the tender amount for getting the work done and claims this sum, assessed at Rs. 41,027-8-0, as damages from Government.

5. The allegations of the plaintiff are not true. Under the terms of the contract timber was to be supplied by the Public Works Department from the Forest Depot. Schedule A of the Contract Form mentioned this condition in these terms. "The contractor will select logs of requisite size at Dandeli in Company with the representative of the Sub-Divisional Officer, Dharwar. Priority for wagons will be arranged by the Public Works Department". When on 21st May 1944 the order to commence work was given by the Executive Engineer, Dharwar, the contractor was specifically asked to submit a list of logs required by him so that arrangements could be made to reserve them. The contractor, however, delayed selection of the logs on various pretexts. He complained that the logs available were not seasoned and then that he required square logs and not round ones. The contractor's allegations that the logs were not seasoned was without substances as would be seen from the Reports of the Divisional Forest Officer, Northern Division. Moreover, there was no condition in the tender for supply of square logs. His objection to accept round logs was it appears, that there would be more wastage in sawing. It is not known how far this objection is real. However, the contractor should have known that only round logs were available at Dandeli and not square ones. Moreover to set off wastage Public Works Department had agreed to release a sufficient quantity to cover up wastages (see Executive Engineer's letter dated 9th December 1944, p. 105 case pp.) The whole correspondence shows that the Contractor went on delaying selection for reasons best known to himself and he suffered loss if any on account of his own action and he cannot hold Government responsible for it.

6. Further in December 1944, the Contractor voluntarily approached the Superintending Engineer with an offer to use his own wood for the purpose. In paragraph 4 of his application he specifically stated that :—

> "Notwithstanding the above changes in the terms of my contract in respect of the supply of teak logs by the Department, I hereby give a definite undertaking that I will supply all the furniture at Dharwar and at my tendered rates as agreed to by me without raising the question of enhanced rates for any reason whatsoever." It is contended by the plaintiff that he signed this application under pressure and that he was orally promised by the Superintending Engineer enhanced rates. These allegations are mischievous and frivolous and should be denied. The plaintiff was a well seasoned businessman. He must have known the consequences of his breach of contract and he must have decided to make the offer which he in fact made in order to save himself the unpleasant consequences of a breach. The plaintiff was not an ignorant agriculturist who can be coerced and deluded into putting his

signature on any paper. It should be contended that the plaintiff voluntarily and of his own free will made the offer which was accepted by the Public Works Department and now he could not turn round and hold Government responsible for the alleged losses."

7. The position, therefore, stands as follows. The plaintiff made an offer which was accepted by Government and the contract was completed. The plaintiff has been paid according to the rates agreed upon and he can have no grievance. He, however, alleges rise in prices and the question arises whether he can claim any enhanced rate on account of such increase in prices. The plaintiff has contended that Government has granted enhanced rates in such cases and that he should be given enhanced rates also. The fact that Government might have granted enhanced rates in similar cases is irrelevant so far as the plaintiff is concerned. That grant might have been *ex-gratia* and will not entitle the plaintiff to claim higher rates. In order to succeed in the suit, he must show that he had a legal right to enhanced rates. No such right exists in law. There was a valid binding contract in existance. The price to be paid was mutually agreed upon and fixed and in the circumstances, it is not open to the plaintiff to seek variation of those terms. "As a general rule the law will have nothing to do with the question of adequacy of consideration, it leaves the parties free to make their own bargain, and refuses to adjudicate upon the value of any particular things or act to any particular person — the law having no means of deciding this matter, and it being considered unwise to interfere with the liberty of contract and the free exercise of the judgment and will of the parties by not allowing them to be sole Judges of the benefits to be derived from their bargains—provided there be no incompetency to contract and the agreement violate no rule of law" (see Chitty on Contracts, 12th Ed. p. 47). In view of this position, it is not open to the plaintiff to sue for higher prices on account of increase in the market rates. The contract was to be executed in a very short space of time. Prices usually do not fluctuate very much within 3 months. Had the plaintiff taken prompt steps to execute the contract in time he would not have suffered the alleged loss. Moreover, when the terms of the contract were varied in December 1944, it was open to him to make a claim for enhanced rates before the proper authorities for their consideration. The plaintiff failed to do this and now after completion of the contract, it is not open to him to raise that matter. His rights are concluded by the written contract.

8. The plaintiff has also alleged that the building was not ready when the furniture was taken to Dharwar, that it had to be stored and some damage was caused to it and that he had to make it good at his own cost. It is true that the building was not ready in time, but the contractor cannot

hold Government responsible in damages on this account (see clause 16 of the Tender form). The Contractor does not seem to have preferred his claim in time, and, therefore it cannot now be considered. Moreover, it appears that his men were not detained at Dharwar as alleged. As regards breakages also Government is not responsible. Under the terms of the contract, the Contractor was to fix the furniture and it was his duty to guard it till it was actually fixed and handed over to the Public Works Department. There is also no substance in the allegations of the plaintiff that higher rates were charged for fixing glass panes. The work of fixing glass panes was undertaken on the Contractor's request and only actual expenses were debited to him.

9. The plaintiff has complained that he has not been supplied with 42 tons of teak wood as per agreement and in the circumstances he has requested that either he should be allowed to purchase it at the scheduled rate or in the alternative, he should be awarded damages for failure to supply it. Government has not refused to supply him the teak wood to which the plaintiff is entitled under the terms of the contract. In fact orders for release have been issued to the Forest Department and all that remains to be done is for contractor to go to the Depot and select the logs that he requires.

10. The Contractor has claimed damages for not supplying teak wood in 1945 or in the alternative the difference between the market value and the scheduled rates. The contractor is not entitled to damages. There was not condition to supply the timber only in 1945. He had agreed to take it when available and Government has been and is willing to supply it but it is the contractor himself who is refusing to take delivery. His claim for the difference in price is also not tenable.

11. For all these reasons it should be urged that the suit fails and should be dismissed with costs.

This was read with D.F.P Belgaum's letter No. J.62 of 1951 of 12-3-51 filed with the pps. of O.S. No. 138/49 in S. Belgaum 5/51

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Ex. 25.

Reg.O.S. 133 of 1949

15/50

I S S U E S

1. Does deft prove that seasoned teak wood was available in - Government Depot and that plff 1 did not take it ?
2. Does plffs prove that the undertaking fiven by the deceased plff, in the application dated 30-12-1944, that he would not claim enhanced rate, was taken by the exercise of undue influence and that he was not bound by it ?
3. Was the deceased entitled to claim enhanced rate ? If so, what is due to him on that account ?
4. Was the laboratory ready when the furniture was taken to Dharawar ? If not, did the deceased plff suffer any loss thereby ? What is due to plffs on that account ?
5. Has this court no jurisdiction to try this suit ?
6. Is the suit barred by limitation ?
7. What order ?

No more sought.

sd.

21-2-1951.

Jt. Civil Judge, S.D,.

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Legal dept.

Submitted for information -
Filed in S. Bef. 15/50.

17/3

A. Sole.

17-3.

S Bef

Reg. O. S. No. 133 of 1949.

In the Court of the Civil Judge, Belgaum.

1. Ganapat Gundo Desai, age about 46. caste Maratha, occ. contractor, resident of Belgaum. ... Plff.

versus

1. The Province of Bombay. Deft.

Value for Court fees and Jurisdiction
Rs. 102,427/-

In this the plff above-named begs to state as follows:-

1. The plff is a timber merchant and bulding contract-or, carrying on that business at Belgaum and other neighbour-ing places. He undertakes the construction and repairing of Government buildings and also the making and supply of furnit and building meteriala to Govt. offices and public institutic With a view to carry out these works Government undertake to supply and the plff used to be supplied with the necessary ti-er and other meterials by Government at schedule Rates fixed by them.

2. In March 1944, the Exicutive Enginner, Dharawar Division, Dharawar, had issued a notification inviting tenders for providing furnitures for thenew Chemistry Laboratory - Building of the Karnatak College, Dharawar. The plff had sent his tender fir Rs. 16,411/- and it was accepted by the said officer on 21-5-1944. According to the terms of the notificati-on the work was to be completed within three months of the supply of the seasoned teak wood to plff by Govt. at schedule rates. The plff waited for the supply of the teak-wood, and inspite of repeated demands and frequent visits to Dharawar and Dandeli, for that purpose, teak wood was not supplied to him at all. The depot officer Dandeli informed the plff in October 1944 that seasoned teak wood was not then available. Then the Exicutive Engineer, inquired with the conservator of Forests, if teak wood could be seasoned and supplied but he was informed that it could not be done. The plff then suggest that he might be permitted to use teak wood from his own stoc

and he should thereafter be supplied at scheduled rates, as soon as possible, with the actual quantity of teak wood utilised by him for preparing the furniture. Government accepted this offer and permitted plff to make the furniture at Belgaum out of the teak wood in his stock.

3. But by the time the afore mentioned agreement was reached, theprices of the requisite timber and all materials required for making the furniture, and the wages of the carpentors and other workmen had enormously increased. The plff had thereafter already demanded enhanced rates, as the teak wood was not supplied by Government in time. The then superintending Engineer promised orally that plff would be given enhanced rates and told the plff to commence the work without waiting for a written order to that effect as there would be delay in getting sanction for the same through proper channel. The plff was called by the Superintending Officer Engineer to his office and was told that if the application for revised rates was then forwarded, he and his office would be blamed by the Accountant General for inviting the accepting tenders when seasoned teak wood was not in their possession. He orally promised to grant enahnced rates and requested the plff to sign a formal application saying the plff would supply the furniture at the tendered rates and would not raise the question of enhanced rates. The plff was assured that the application would come in his way of claiming enhanced rates after the work was finished. That he application was drafted by the Superintending Engineer and typed in his office. Plff however suggested some modifications in that application, but he was threatened that if he did not sign the application as it was, the amount of the bill of the P.W.D. work going on at Kolvi, due to plff, would be withheld or reduced to compensate for any loss that might occur, if this furniture work was not completed by any other contractor. The plff being thus placed in a helpless position, could not afford to go against the displeased the said officer. He had therefore no alternative but to sign the said application dated -

dated 30-12-1944 and rely on his oral promise and assurance to grant enhanced rates, inspite of the undertaking in the said application.

4. The plff then prepared within the stipulated period the furniture with his own teak wood and took it to Dharawar as per instructions of the Engineer. But as the Laboratory building was not ready then, the furniture had to be stacked in the college building as advised. The furniture was given into the possession of the P.W.D. Officer in charge and a receipt was obtained. The laboratory building was not ready even by the time when the College re-opened in June 1945 after the summer vacation was over. So the furniture had to be removed to the P.W.D. store room as instructed by the Engineer and some of the furniture was damaged during transict, the plf repaired the damage so caused at his own cost.

5. Later on theplff was informed by the Engineer, Dharawar, that he should arrange to fix the furniture in the Laboratory building. The plff then sent his carpentors and other workmen to Dharawar for that work. But they had to remain idle for more than six weeks as the furniture was not brought back to the College premises., from the P.W.D. store room by that department as it was their duty to do so. The plff had therefore to bear loss of Rs.80/- per day, as he had to pay the wages of his wokmen, though they did no work during that period. The plff had then complained about this to the Engineer.

6. After the furniture was fixed in the building, some of its parts such as locks, blots, planks etc. were found missing and the plff had to replace them at his own cost, as the Department alleged that these were not origionally fixed at all by the plff. Though the plff had proved to the satisfaction of the Assistant Engineer, that the plff was not fault in this respect, the additional cost which the plff had to bear on that account was not sanctioned in the final bill.

7. As glass panes were not available in themarket., glass work had still remained to be done after the furniture was fixed in the laboratory building. When the glass panes had

arrived, the plff had sent his workmen to fix them; but they were sent back by the Assistant Engineer, who said that he would get them fixed departmentally at the rate at which plff would do it. But when the final bill was prepared, plff found to his surprise, that higher rates were charged for fixing the glass panes and only a part of the expenses incurred by the plff for bringing the furniture from the P.W.D. store room to the College premises was allowed. Certain other reductions also were made in the bill without any justification. Plff therefore refused to sign and accept the bill. But he was persuded by the Superintending Engineer to sign it by giving oral assurance which was given by a responsible officer, plff accepted the reduced bill.

8. The plff then renewed his prayer for enahnced rates on the grounds mentioned above by making an application to the Superintending Engineer, S.C. Belgaum; but it was rejected by that officer on 29/11/1947 on the ground that the plff had given an undertaking in the application dated 30-12-44 that he would not claim enhanced rates. Then the plff appealed to the Government of Bombay on 13-12-1947 but the appeal was dismissed on 16-7-1948. The plff has not as yet been supplied with 42 tons of teak wood which was sanctioned in his favour as he had used his own teak wood for preparing the furniture as stated in paras 3 and 4 above. According to the terms of the agreement plff has been given the right to select the teak wood longs of the required sizes and seasoned quantity at Dandeli in company with the representave of the Sub-Divisional Officer, Dharwar. But the plff has not been as yet given the apportunity to select the longs and the matter is being unnecessarily postponed on some ground or the other. The plff has therefore filed this suit for recovery of the enhanced rate of Rs.250/- over and above the tender amount and also for recovery of 42 tons of teak wood longs according to plff's selection or damages for not supplying the same.

9. The so-called undertaking given by the plff in his application dated 30-12-1944, that he would not claim increased

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increased rates was not a valuntary act of the plff. The Superintending Engineer took un-due advantage of his official and dominating position and exerted undue influence on the plff that it was quite a formal matter which would not be used against the plff and that it would not come in his way when claiming increased rates. So the plff is not bound by th that undertaking and he is entitled to claim enhanced rates which are always granted by Government, when it is just and equitable to do so due to change of circumstances and unforseen development after the tender is accepted. Under similar circumstances Govt. have granted enhanced rates to contractors in cases of Channawadi, Nittur and Belgundi Bandhara Works. On account of the delay on the part of the govt. in supplying seasoned teak and aslo on account of the subsequent events stated above, plff had to pay 250% more than the tender amount for getting thework done andhe has suffered loss to that extent. Even after the furniture was prepared, theplff had no inour additional expenses on account of the fact that the laboratory building was not ready, for the furniture, to be fixed in it and also on accounth of other circumstances mentioned above. The plff is therefore entitled to claim enhanced rate of Rs250% over and above the tender amount by way of damages. The cause of action arose on 16-7-1948, when theprayer of the plff was rejected by the Government of Bombay and also on 31-8-1948 when delivery of teak wood was not made as per terms of agreement.

10 The Court has jurisdiction to try this suit as th the cause of action arose within the jurisdiction of this Cour -rt and the value of the suit is more than Rs. 5000/-. The neces ary notice under section 80 of the C.P.C has been served on the collector of Belgaum.

11). The value of the suit for Court fees and jurisdiction is Rs. 102,427-8-0 as shown below:-

(i)	Rs. 41,027-8-0	250% of thetender amount of Rs.
	11,200-0-0	16,411/- as damages value of 42 tons of teak wood at schedule rate viz,Rs. 266 ⅔ per ton.(this is the valuation for recovery of teak wood)
	24,097-8-0	Interest by way of damages at 9% on the market value of 42 tons of teak wood in 1945 i.e. Rs.63,000 (1500 x 42) from 1-4-45 to 1-7-49. (the Contract was to be completed on 31-3-1945).
	Rs. 76,325-0-0	

(ii) Value of the suit for the altermative relief is Rs. 102,427-8-0 as shown below:-

Rs. 41,027-8-0	250% of the tender amount of Rs. 16,411-0-0 as damages.
51,800-0-0	Damages for not supplying 42 tons of wood; it being the difference between the value at the current rate (Rs. 1500 per ton) and the value at the scheduled rate(Rs. 266 ⅔ per ton) (Rs. 63000-0-0 Rs. 11200/-.
9,600-0-0	Refund of deposit with govt. as advance of the value of 42 tons of teak wood.
Rs. 102,427-0-0	

Court fee is to be paid on the latter amount:-

12. Plff prays for a decree:-

(1) for recovery of Rs. 41,027-8-0 as enhanced rate over and above the tender rate and for recovery of 42 tons of teak wood as selected by theplff, on payment of its price at sched rates, deducting the sum of Rs. 9600/- already deposited with

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with Govt. and also for recovery of Rs. 4097-8-0 as damages as shown in para 11 above, or in the alternative.

2. For recovery of Rs. 102,487-8-0 as specified in para 11 above.

3. For future interest on the amount awarded and costs of this suit.

4. For any other relief which the Court may deem fit to gran

signed and dated -7-1949.

signed and dated -7-1949.

presented on
16-7-1949.
C.C.C.

L.D.R.I.'No. 11518 dt/ 21-4-54.

Submitted with reference to P.W.D. note at p. 103 ante.

One Shri G.G. Desai had filed civil suit No. 133 of 1949 in the Court of the Civil Judge, S.D., Belgaum against the State of Bombay, for the recovery of a sum of Rs. 60,872-8-0 and 42 tons of teak wood or in the alternative for the recovery of Rs. 1,02,427-0-0. This amount was claimed by him as damages for the loss alleged to have been suffered by him in connection with a contract entered into by him with Govt. for the supply of furniture to the New Chemistry Laboratory of the Karnatak College, Dharwar, in 1944. It may here be mentioned that this amount included a sum of Rs.9600/- deposited by him with Government. Thereafter the said G.G. Desai died and after his death, the suit was compromised by his heirs with Government on 16-11-1951 on the lines indicated in L.D's memo No. 16109 dated 10-10-1951 at p. 55 ante. One of the terms of this compromise was that the plaintiffs should recover from defendant 42 tons of teak wood as selected by them on payment of its price at Rs. 266 2/3 per ton after deducting Rs. 9600/- which were in deposit with Government that is, on payment of Rs. 1600/- to the defendant. Thereafter the Conservator of Forests, S.C. having been requested by the Ex. Engr., Dharwar Division, to issue necessary orders for the release of 42 tons of teak wood to the plaintiff according to the terms of the cimpromise, the matter was referred by the former to the Chief Conservator of Forests, Bombay State, who intimated to the Superintending Engineer, S.C. that he had already issued orders for the release of the teak wood but out of the amount of Rs. 9600/- in deposit with Government an amount of Rs. 6918/- was adjusted

towards the outstandings against the contractor and the balance of Rs. 2628/- was refunded to the contractor's heirs before the date of the compromise. This fact having been kept back from the knowledge of the Court by the plaintiffs at the time of the compromise and they having thus practised found on Govt. the Superintending Engineer, S.C. felt dount as to whether the compromise could stand, so he referred the matter to the Dist. Govt. Pleader, Belgaum for advise. The latter being doubtful as to whether a consent decree can be ~~rewarded~~ reviewed on the ground of fraud, ~~being~~ has advised the ~~Deptt~~ Department to refer the matter to R.L.A. for opinion and obtain Govt's sanction for the filing of a suit against the plaintiffs, for the recovery of the amount wrongly mentioned in the decree. Accordingly the papers have now been referred by the P.W.D. to L.D. for taking necessary action in the matter.

Before any instructions are issued to the D.G.P. in the matter, it is necessary to know whether the teak ~~bags~~ logs have already been delivered to the plaintiffs as per release orders issued by the Concervator of Forests. P.W.D. may be requested to obtain ~~this~~ this information from the Conservator of Forests and forward it to this Dept. at an early date. In case the logs have not been so far delivered to the plaintiffs, the P.W.D. may further be requested to arrange for the withholding of ~~a~~ the delivery till the matter is considered by the Department. It may perhaps be not necessary for Govt. to file a suit if the delivery of the logs has not so far been given to the plaintiffs. In that case Govt. can insist upon full price of the wood being paid before the logs are delivered and if ~~a~~ the party is not willing to do so and takes steps for the execution of the compromise decree, Govt. can bring plaintiff's fraud to the notice of the Court and request it not to execute the decree till full price of the wood is paid by the plffs. In case the teak logs d. . r.

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have already been delivered to the plaintiffs, the Government's only remedy would be to file a suit against the plaintiffs for the recovery of the price of wood ~~less paid by them.~~ delivered.

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Office of the R.L.A.

Before any instructions are issued to the District Government Pleader in the matter, it is necessary to know whether the teak logs have already been delivered to the plaintiffs as per release orders issued bythe Conservator of Forests.The Public Works Department is requested to obtain this information from the Conservator of Forests and forward it to this Department at an early date. In case the logs have not been so far delivered to the plaintiffs, the Public Works Department is further requested to arrange for the withholding of the delivery till the matter is considered by this Department. It may perhaps be not necessary for Government to file a suit if the delivery of the logs has not so far been given to the plaintiffs. In that case Government can insist upon full price of the wood being paid before the logs are delivered, and if the party is not willing to do so and takes steps for the execution of the compromise decree, Government can bring plaintiffs' fraud to the notice of the Court and request it not to execute the decree till full price of the wood is paid by the plaintiffs. In case the teak logs have already been delivered to the plaintiffs, the Government's only remedy would be to file a suit against the plaintiffs for the recovery of the balance of the price of wood delivered.

a/c

for Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 11198/E dated the 1st ~~April~~ May 1954.

Submitted for Signature.

30/4

hsp/30/4/54

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Legal Department.
R.I.No.1031/Confl., dated 3-7-54.

As the logs have not been delivered to the decree holder or his heirs no further action seems to be necessary on the part of the Government./The Government may wait till the decree holder's heirs file a Darkhast for the execution of the decree by delivery of the logs. At that stage the Govt. may bring to the notice of the Court the fraud played by the decree holder and contend that the decree was not executedble under the circumstances. If that contention is not upheld by the Court a suit will have to be filed for the necessary relief.

Sd. S.R.Kaprekar
Solicitor to Govt.

U.R.to P.W.D.,No.[illegible]-Confl., dated the 16th July 1954.

[illegible] (30.6.54)